



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV-122-FOR; Docket ID OSM-2013-0011; S1D1SSS08011000SX066A00067F144S180110; S2D2SSS08011000SX066A00033F14XS501520]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM),

Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia is submitting a proposed amendment to revise its Surface Coal Mining and Reclamation Act to conform the State's requirements for informal conferences and decisions on surface mining permit applications with

parallel provisions of Federal law, and to provide tax incentives for mine operators who reclaim bond forfeiture sites.

DATES: We will accept written comments on this amendment until 4 p.m. E.S.T., on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If requested, we will hold a public hearing on the amendment on [INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4 p.m. E.S.T., on [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by WV-122-FOR; Docket ID OSM 2013-11, by any of the following methods:

- *Federal eRulemaking Portal:* The proposed rule has been assigned Docket ID OSM-2013-11. If you would like to submit comments through the Federal eRulemaking Portal, go to <http://www.regulations.gov> and follow the instructions for submitting comments.
- *Mail/Hand Delivery:* Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301. Please include the rule identifier (WV-122-FOR; Docket ID OSM 2013-11) with your written comments.

Instructions: All submissions received must include the agency Docket ID OSM 2013-11 for

this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading in the SUPPLEMENTARY INFORMATION section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under FOR FURTHER INFORMATION CONTACT.

Docket: The proposed rule and any comments that are submitted may be viewed over the internet at <http://www.regulations.gov>. Look for Docket ID OSM-2013-11. In addition, you may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM’s Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347-7158. E-mail: chfo@osmre.gov.

West Virginia Department of Environmental Protection, 601 57th Street, SE, Charleston, WV 25304, Telephone: (304) 926-0490.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 604 Cheat Road, Suite 150, Morgantown, West Virginia 26508, Telephone: (304) 291-4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255-5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347-7158. E-mail: chfo@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the West Virginia Program
- II. Description and Submission of the Proposed Amendment
- III. Description of OSM's Proposed Action
- IV. Public Comment Procedures
- V. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal

mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "...a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act...; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, Federal Register (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description and Submission of the Proposed Amendment

The West Virginia Department of Environmental Protection (WVDEP) is submitting a proposed amendment to revise the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA), West Virginia Code 22-3-1 through 33.

Committee Substitute for House Bill 2352 amends West Virginia Code section 22-3-11 to provide tax incentives for mine operators who reclaim bond forfeiture sites. Committee Substitute for House Bill 2352 was adopted by the West Virginia Legislature on April 13, 2013, and approved by the Governor on April 29, 2013. These changes became effective under State law on July 12, 2013.

Senate Bill 462 amends West Virginia Code sections 22-3-20 and 21 to conform the State's requirements for informal conferences and decisions on surface mining permit applications with parallel provisions of Federal law. Senate Bill 462 also contains non-substantive changes, such as "division" to "department," "with" to "pursuant to" and "director" to "Secretary" throughout sections 20 and 21. Senate Bill 462 was passed by the West Virginia Legislature on April 11, 2013, and signed into law by the Governor on April 29, 2013. These changes became effective under State law on July 10, 2013.

III. Description of OSM's Proposed Action

1. WVSCMRA 22-3-11(g) and (h)

In accordance with Committee Substitute for House Bill 2352, the State proposes to add new language to subsections (g) and (h) of the WVSCMRA providing mine operators with tax incentives to reclaim bond forfeiture sites within the State.

Subparagraph (g)(2)(A) provides that a tax credit shall be granted against the tax imposed by subsection (i) of this section to any mine operator who performs reclamation or remediation at a bond forfeiture site which otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund. Subparagraph (2)(B) provides that the amount of the reclamation tax credit granted shall be equal to the amount that the Tax Commissioner determines based on the project costs, as shown in the records of the Secretary, that would have been spent from the Special Reclamation Fund or Special Reclamation Water Trust Fund to accomplish the reclamation or remediation performed by

the mine operator, including expenditures for water treatment. Subparagraph (2)(C) provides that to claim the credit, the mine operator must file with the Tax Commissioner a written application seeking the amount of the credit earned. Within 30 days of receipt of the application, the Tax Commissioner will issue a certification of the amount of tax credit to be allocated to the eligible taxpayer. If the amount of the credit is less than the amount applied for, the Tax Commissioner must set forth in writing the reasons for the difference. If no certification is issued within the 30-day period, the application will be deemed certified. Any decision of the Tax Commissioner is appealable pursuant to the “West Virginia Tax Procedure and Administration Act” as set forth in Chapter 11, Article 10 of the West Virginia Code. Applications for certification of the proposed tax credit must contain the information and be in the detail and form as required by the Tax Commissioner.

New subsection (h) is added and includes language for the Tax Commissioner to promulgate rules for legislative approval to carry out the purposes of this section. The remaining subsections (i) through (o) have been re-lettered to conform to the proposed changes.

WVDEP intends these revisions to provide tax incentives to mine operators who reclaim bond forfeiture sites. The proposed revisions are intended to conform to the requirements of 30 CFR 800.50 and sections 509 and 519 of SMCRA.

2. WVSCMRA 22-3-20

In accordance with Senate Bill 462, the State proposes to revise language extending the time to hold informal conferences on surface mining permit applications. Revised subsection 20(b) of the WVSCMRA provides when an informal conference will be held on a surface mining permit application. The State currently requires that informal conferences be held within three weeks after the public comment period closes. Under the proposed amendment, the Secretary must hold the informal conference on the surface mining permit application within a reasonable time after the close of the public comment period.

WVDEP acknowledges that its proposed revisions allow the State's requirements to conform more closely to the parallel Federal requirements. The proposed revisions are intended to conform to the Federal provisions at 30 CFR 773.6(c) and 773.7 and sections 513 and 514 of SMCRA.

3. WVSCMRA 22-3-21

In accordance with Senate Bill 462, the State proposes to revise language extending the time in which the Secretary must issue or deny a permit application. Amended subsection 21(a) of the WVSCMRA provides when the Secretary must issue a decision on a permit application. Currently, if an informal conference is held, the Secretary must issue a decision granting or denying a permit, in whole or in part, within thirty days of the informal conference. Under the proposed revision, the time in which the Secretary must issue or deny a surface mining permit is extended from 30 days to 60 days.

WVDEP acknowledges that the proposed revisions allow the State's requirements to

conform more closely to the parallel Federal requirements. The proposed revisions are intended to conform to the Federal provisions at 30 CFR 773.6(c) and 773.7 and sections 513 and 514 of SMCRA.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether these amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve these revisions, they will become part of the West Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an E-mail or Word file avoiding the use of special characters

and any form of encryption. Please also include Attn: SATS NO. WV-122-FOR; Docket ID OSM -2013-11 and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field Office at (304) 347-7158.

Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. E.S.T., on [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We

conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 27, 2014.

Thomas D. Shope, Regional Director
Appalachian Region

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